

### **REMARKS/ARGUMENTS**

In the Office Action the Examiner indicated that the trademark "Celite" has been used in the patent application. At least on page 18, line 10 the Celite mark has been identified as being a trademark through the inclusion of a ® after the mark. The mark has been used with the identifier of "silica particles" to define the broad general type of material sold under this mark. However, applicants' have not always used the Celite trademark in the manner requested by the Examiner. As part of this response Applicants' have reviewed the patent application and have amended the application to place a capital C at the start of the mark and to place a ® after the mark to properly designate it as a trademark. It is applicants' position that this amendment to the specification properly identifies the "Celite" trademark and overcomes any objection by the Examiner. If the Examiner has any further concerns on the use of the "Celite" trademark or any other trademark in the patent application it would be appreciated if the Examiner would contact the undersigned attorney to discuss such concerns. All attempts will be made to address such concerns as it is not applicants' intention to improperly use the trademark of any third parties.

Claims 4, 5 and 13 were rejected under 35 USC § 112, second paragraph, as being indefinite. The thrust of this rejection was the use of the "Celite" term in claim 5 and the use of terms that describe at least similar materials in claim 13 (diatomaceous earth) and in claim 4 (silica). Applicants' have canceled claim 5 and this obviously resolves any issues with regard indefiniteness for this claim. With regards to claims 4 and 13 it is applicants' position that diatomaceous earth and silica, although similar, are not the same component. Therefore, it is applicants' position that claims 4 and 13 are not redundant and properly define applicants' claimed invention. Accordingly, applicants' request that the Examiner withdraw the rejection under 35 USC § 112 for claims 4 and 13.

Claims 1-3, 7-8, 10, 12 and 14-17 were rejected under 35 USC § 102 (b), or, in the alternative, under 35 USC § 103 (a) as being unpatentable over the Lam '750 reference.

Applicants' amended claims define a friction material have two layers. The primary layer is a porous fibrous base material and the secondary layer contains geometrically symmetrically shaped friction modifying particles that at least partially cover the outer surface of the fibrous base material. The material of the primary layer holds the geometrically symmetrically shaped friction modifying particles on the outer surface of the porous primary layer.

The Lam '750 reference discloses a fibrous base material and a secondary layer of carbon particles positioned on at least one surface of the fibrous base material for use as a friction material. The applicants' agree with the Examiner statement that the Lam "750 reference does not specifically dictate the shape of the carbon particles that are used on the secondary layer. There is nothing in the Lam "750 reference that discloses or suggest that the carbon particles on the secondary layer are geometrically symmetrically shaped as defined in applicants' claimed invention. In fact, the carbon particles disclosed in the Lam '750 reference are not geometrically symmetrically shaped particles. It was not until the invention covered by the present patent application that the advantages of using such geometrically symmetrically shaped particles was appreciated. As set forth on page 19, lines 1-4, the geometrically symmetrically shaped friction modifying particles are relatively expensive and would not be utilized in the secondary layer without an express understanding of the advantages provided by friction modifying particles containing this unique shape. As indicated on page 18, lines 20-31, there's a disclosure of using geometrically symmetrically shaped particles and irregularly shaped friction modifying particles for the secondary layer of the friction material. This further supports that the geometrically symmetrically shaped particles are a distinct and separate product from the irregularly shaped friction modifying particles that have been traditionally used in friction material

such as that described in the Lam '750 patent. As the Lam '750 patent does not disclose or suggest any advantages or reasons for using geometrically symmetrically shaped particles there would be no reason to use such expensive particles in the friction material disclosed in this reference. In fact, the lack of any disclosure or suggestion concerning the benefits that can be derived from using geometrically symmetrically shaped particles teaches away from the use of such costly particles in a friction material. The inventor on the Lam '750 patent is also a co-inventor on the present patent application. It was not until the current invention was developed that geometrically symmetrically shaped particles were utilized on the secondary layer of a friction material. There is no suggestion in the Lam '750 reference to use geometrically symmetrically shaped friction modifying particles nor would it have been obvious to one of ordinary skill in the art to include such geometrically symmetrically shaped particles based on the disclosure of the Lam '750 reference. Accordingly, it is applicants' position that the Lam '750 reference does not disclose or suggest applicants' claimed invention and the Examiner is requested to withdraw this basis of rejection for the claims.

Claim 4-6, 9, 11 and 13 were rejection under 35 USC § 103 (a) as be unpatentable over the Lam '750 reference in view of the Lam '416 reference. The Lam '416 reference has been cited by the Examiner to show that the secondary layer can include silica particles to provide an improved friction surface. However, the Lam '416 reference does not disclose or suggest the use of geometrically symmetrically shaped friction modifying particles as set forth in applicants' claims. Accordingly, the Lam '416 reference does not modify the previously discussed Lam "750 reference to provide the deficiencies of the latter reference. Accordingly, it is applicants' position that the Lam '750 reference and Lam '416 reference, taken individually or in combination, do not disclose or suggest applicants' claimed invention and it is respectfully requested that the Examiner withdraw this basis of rejection for the claims.

Appl. No. 10/666,090  
Amdt. Dated August 4, 2005  
Reply to Office Action of May 4, 2005

In view of the amendments to the claims and the arguments presented herein, it is applicants' position that the claims are patentably distinct over the references applied by the Examiner. A favorable action on the claims is respectfully requested.

Respectfully submitted,  
EMCH, SCHAFFER, SCHAUB  
& PORCELLO CO., L.P.A.

By: Charles R. Schaub  
Charles R. Schaub  
Reg. No. 27,518  
Tel.: (419) 243-1294